UNITED NATIONS

CCP

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/95/Add.2
20 July 1994

ENGLISH
Original: RUSSIAN

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1994

UKRAINE*

[13 July 1994]

1. This fourth periodic report of Ukraine (the former Ukrainian Soviet Socialist Republic) is submitted in accordance with article 40 of the International Covenant on Civil and Political Rights and the decision on periodicity taken by the Human Rights Committee. In compiling the report account was taken of the principles governing the form and content of periodic reports and of the fact that their aim is to supplement and bring up to date the information asked for by the Committee.

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* For the initial report submitted by the Government of Ukraine, see CCPR/C/1/Add.34; for its consideration by the Committee, see CCPR/C/SR.153-SR.156, SR.159 and SR.160 and Official Records of the General Assembly, Thirty-fourth session, Supplement No. 40 (A/34/40), paras. 248-285. For the second periodic report submitted by the Government of Ukraine, see CCPR/C/32/Add.4; for its consideration by the Committee, see CCPR/C/SR.609-SR.613 and Official Records of the General Assembly, Fortieth session, Supplement No. 40 (A/40/40), paras. 628-681. For the third periodic report submitted by the Government of Ukraine, see CCPR/C/58/Add.8; for its consideration by the Committee, see CCPR/C/SR.1028, SR.1029 and SR.1031 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 40 (A/46/40), paras. 186-228.

2. This report is the first to be submitted by independent Ukraine, having been compiled as one of the four-yearly periodic reports of participating States submitted in accordance with the International Covenant on Civil and Political Rights (see documents CCPR/C/1/Add.34, CCPR/C/32/Add.4).

3. The period since the third report has been marked by a fundamental change in the status of Ukraine under international law - it has become an independent sovereign State. This occurred as a result of the break-up of the USSR, initiated by its component entities. The basis in law for Ukraine obtaining State independence is article 14 of the Constitution of the former USSR and article 69 of the Constitution of the Ukrainian SSR conferring on Ukraine the right to self-determination even to the extent of leaving the USSR, the State Independence Act adopted by the Supreme Council of the Ukrainian SSR on 24 August 1991, the results of the nationwide referendum held on 1 December 1991 and also the ratification by a constitutional majority of the Supreme Council of the Ukraine of the Agreement for the Establishment of the Commonwealth of Independent States concluded by Byelorussia, Russia and Ukraine on 8 December 1991. The basis under international law for the independence of Ukraine is the right to self-determination laid down in the United Nations Charter and other international legal instruments. Article 68 of the present Constitution now defines Ukraine as "an independent democratic State under the rule of law".

4. Thus Ukraine's position in the world community has changed qualitatively and this has afforded fundamentally new opportunities for giving effect to its political potential and allowed it to participate much more actively in international organizations and to enhance its responsibility for the fulfilment of the obligations it has assumed.

5. The Ukraine was of course one of the founding members of the United Nations and has been a member of that organization with full rights since it was established. On 30 January 1992 Ukraine became an independent and full member of the Conference on Security and Cooperation in Europe.

6. The report period has been marked by substantial changes in Ukrainian society as a result of the beginning of radical transformations in its political, economic, constitutional and sociocultural foundations. The course of these transformations has been the main determinant of the present position in regard to the observance of human rights in Ukraine and changes in it during the four-year period.

7. Stopping the activities of and then banning the Communist Party of Ukraine as a component in the Communist Party of the Soviet Union has had a healthy effect in practice on the vital activities of Ukrainian society in all spheres. Above all it has made it possible for genuine political pluralism to arise in the Ukraine. In the legal sphere it has considerably enhanced the role of the law and the judiciary, laid the foundations for a real separation of powers and made it possible to considerably reinforce the legislative functions of the Supreme Council of Ukraine while strengthening the independent role of the judiciary.

8. Reforms in the political sphere have been determined by the organization and legalization of the activities of various political forces, the

establishment of a real multiparty system, a substantial extension of the political rights and liberties of the citizens of Ukraine and processes for giving those rights active effect in State policy.

9. The reforms in the economy were linked in the first instance with the legalization of private property and the establishment of an independent economic system in Ukraine. A whole range of special laws has been adopted designed to create in Ukraine a socially oriented market economy - acts on entrepreneurial activity, on privatization, abolition of monopolies, etc. and also on the organization and activities of the nation's economic institutions.

10. Thus a Ukrainian Act adopted as early as October 1990 repealed chapters 2, 16 and 17 of the Constitution of the Ukrainian SSR which had formed the basis for the economic system of socialist Ukraine. This provided a constitutional opportunity for laying a legislative basis for and introducing and developing the institution of private property and the foundations of a market economy.

11. The institution of private property itself was in the beginning legalized in the form of "private property earned by labour", by the Ukrainian Act on Property adopted by the Supreme Council in February 1991 and amendments made to that Act in July 1992 under which any form of individual property was recognized. Corresponding changes were made in section 2 of the Ukrainian Civil Code "Right to property". Private property in land has now been legalized by article 6 of the Ukrainian Land Code and property in water resources by articles 4 and 6 of the Ukrainian Water Code. A bill is being prepared on intellectual property which envisages recognition of individual property in the results of intellectual activity.

12. At the same time national independent institutions and mechanisms have been established and developed in the Ukrainian economic system (a banking and credit structure, a currency issuing body, budgetary, taxation and other mechanisms) and a legislative basis for the economy has been established that is largely new for Ukraine.

13. The reforms in State law have been primarily to do with the establishment and development of Ukraine's own State structure. Thus, in particular, as early as in the Declaration on State Sovereignty (July 1990) it was established that State power shall be exercised in accordance with the principle of its separation into legislative, executive and judicial authority (section 3). In 1991 the office of President of Ukraine was introduced and the first presidential elections in Ukraine's history were held. The present Constitution of Ukraine, dating from 1978, was substantially amended and work was begun on a draft new constitution. In 1991 a Crimean Autonomous Soviet Socialist Republic was created and in April 1992 a Ukrainian Act on the Status of the Autonomous Republic of the Crimea regulated and provided a legal basis for the interrelationships between Ukraine's central State authorities and the Autonomous Republic of the Crimea.

14. As a result of the break-up of the USSR the question arose of the succession of Ukraine and other republics in regard to its international obligations. In Ukraine this question was basically settled by the adoption of the Ukrainian Act on the State Succession of Ukraine (12 September 1991).

On 10 December 1991 a Ukrainian Act on the Effect of International Agreements on Ukrainian territory was adopted and in December 1993 a Ukrainian Act on Ukraine's International Treaties. In addition in September 1992 the Supreme Council of Ukraine adopted a decree on the accession of Ukraine to the Vienna Convention on Succession of States in respect of treaties.

15. The Ukrainian Act on Citizenship of Ukraine, dated 8 October 1991, introduced that concept and established a procedure for obtaining it, listing the rights and duties of citizens and regulating other important legal aspects of the institution of citizenship.

16. Reform of Ukrainian legislation has taken various directions: constitutional reform, legislative reform, codification, repeal of the discriminatory regulations of previous legislation and adoption of new regulations reflecting and encouraging progressive changes in Ukrainian society.

17. At the same time it should be noted that the principle of the separation of powers has not by a long way been given full effect and the present State mechanisms in Ukraine still have many features of the old political system. It has also not proved possible to complete the constitutional process begun as far back as 1990 by adopting a new Ukrainian Constitution. Work on the draft has encountered problems that are insoluble given the present political instability and uncertainty and the crisis affecting the present constitutional process is now obvious. A way out of that crisis must be found by the newly elected Supreme Council. Practically nothing has been undertaken in regard to the administrative and territorial reform of Ukraine, the need for which is becoming ever more urgent and obvious.

18. The economic reforms had been very unsatisfactorily and inefficiently carried out. Neither the various political forces nor the State authorities, either executive or legislative, have succeeded in developing and proposing to the public a constructive concept for reforming the Ukrainian economy, let alone carrying it out. Economic transformations in the Ukraine during the report period have been unfortunately characterized by unjustified muddle and inconsistency and extremely adverse consequences, for which there are not only objective but also largely subjective causes.

19. There is no need to point out that all these unsolved problems have had a negative effect on the level of protection, observance and guarantee of fulfilment of the citizens' rights and liberties. The living standards of the population of Ukraine have declined enormously in the last few years and according to some data over half of the population are living under the poverty level, while the annual income of the overwhelming majority does not exceed US$ 200. On the whole, reform in the sociocultural sphere can be described as sluggish.

20. It should also be noted that there has been a sharp reduction in the paternalistic role of the State during the report period, which can be evaluated in several different ways. There has been an undoubtedly positive contraction of the administrative and command functions of the State in

politics and economics and in culture, science and education. However, it is impossible on principle to agree with the tendency that has arisen for the State to absolve itself of its social and welfare functions in regard to the socially unprotected strata of the population. Admittedly the main reason for this is the extremely unsatisfactory situation in the economy, but all the same one of the main functions of the State and the main political responsibility of the ruling political forces lies precisely in creating favourable institutional and legal conditions for the fullest possible emancipation of the productive forces of society, i.e. for enhancing its economic well-being.

21. Attention must be drawn to the fact that the real situation regarding observance of human rights, in Ukraine as in any society, is largely determined by the level of education and culture and the degree of development of self-esteem and self-knowledge of its citizens and simply by the citizens' awareness of their legal rights and their intellectual and psychological readiness to claim those rights, put them into effect and protect them. Unfortunately this potential in Ukrainian society is still clearly inadequate, as a result of which observance of many truly progressive regulations, up to international standards, in the sphere of rights and freedoms, is not claimed by the public itself.

22. For that reason one of the most important tasks of society and of the State in ensuring and giving effect to the rights and freedoms of the citizens of Ukraine is wide enlightenment and education. It is necessary to increase substantially citizens' awareness of their rights and the international obligations Ukraine has assumed in regard to them, to make a qualitative change in their intellectual and psychological attitudes and to persistently direct citizens' consciousness and will to the need to claim and give effect to their rights and freedoms, which in many cases they possess only in a formal sense.

23. The State's efforts in this direction must be acknowledged so far as insufficient and national public organizations for the protection of rights are still insignificant and organizationally and economically weak. It seems that an important role must be played here in particular by the introduction of the official post of Supreme Council plenipotentiary for human rights (ombudsman) as envisaged in the draft new constitution of Ukraine.

24. It is satisfying to note the increasingly active, purposeful and effective cooperation in solving these problems given to Ukraine by the world community and many international, intergovernmental and public organizations. Ukraine considers the presentation of this fourth periodic report and its discussion to be also part of this context.

25. In December 1990 Ukraine acceded to the Optional Protocol to the International Covenant on Civil and Political Rights which came into force for it on 25 October 1991. By doing so Ukraine acknowledged the competence of the Human Rights Committee to receive and consider in accordance with established procedures communications from private persons alleging that they are victims of an infraction of the rights set forth in the Covenant.

26. Below information is given with regard to particular articles of the International Covenant on Civil and Political Rights concerning the present state of, and changes in, legislation and its application in Ukraine in the period since consideration of the third periodic report of the Ukrainian SSR.

Article 1

Right to self-determination

27. Relying on article 1 of the International Covenant on Civil and Political Rights and basing its actions on its domestic legislation in accordance with internationally recognized legitimate procedures, the people of Ukraine gave effect in 1991 to their right to self-determination. The independent statehood of Ukraine is recognized by the world community. Ukraine has become a member of the international community with full rights.

28. On the basis of this right to self-determination to which they have given effect, the people of Ukraine is now independently establishing its political status, ensuring its economic, social and cultural development and carrying out a historically unprecedented reform of its society.

29. By giving effect to its sovereignty the people of Ukraine for the first time in its many centuries of history is enabled to dispose freely of its own natural riches and resources, bringing this into line with considerations of mutual benefit in the structures of interregional and international economic cooperation.

30. In its foreign policy Ukraine is constantly working to give effect to the right to self-determination, taking into account internationally recognized realities, observance of the principle of territorial integrity and the inviolability and sanctity of existing borders and also bearing in mind the development of national cultural and territorial autonomies, the further democratization of public life and State administration. For this position to be taken by Ukraine is timely even from the internal point of view because of the need to overcome separatist tendencies in a number of regions, particularly the Crimea.

Article 2

Equal rights and provisions for their legal protection

31. The principle of equal rights was widely proclaimed in the constitutions of Ukraine in the Soviet period, including the Constitution of 1978 that is still in force. It began to have real content after the fall of the communist regime in August 1991, the restoration of the independent statehood of Ukraine and the carrying-out of specific political, economic and legal reforms.

32. Of all the forms of discrimination the most applicable to Ukraine until recent times was discrimination on political grounds. Its constitutional basis was article 126 of the 1936 Constitution of the USSR followed by article 6 in the USSR Constitution of 1997 and article 6 of the Ukrainian SSR Constitution of 1978, which laid down the absolute political and State power

and monopoly of the Communist Party. The Constitution of the USSR in general has now lost its legal force in Ukraine and article 6 of the Ukrainian Constitution of 1978 was repealed in October 1990.

33. The depoliticization of State institutions has been accomplished in law and in reality, including that of the power structures of the State authorities - the army, State security and internal affairs bodies, the courts and the public prosecutor's offices. Its juridical basis has been a decree of the Supreme Council of the Ukraine dated 24 August 1991 on the "departyization" of the State authorities, establishments and organizations of Ukraine.

34. A regulatory legal basis has been created for a real multiparty system and the juridical foundation has been laid for the legalization of various types of citizens' associations and also the activities of missions and regional branches of various international public organizations.

35. At the present time in Ukraine over 30 political parties have been registered, representing the whole political spectrum of Ukrainian society from extreme left to extreme right. In particular a new Communist Party of Ukraine has been registered.

36. Some anxiety in regard to observance of the principle of equality, particularly in respect of membership of a nationality, is being aroused by the activities of organizations of the extreme right of a nationalist stamp carried out under the slogan of "Ukraine for the Ukrainians" and also by imperialistic pro-Russian separatist tendencies. Displays of open anti-Semitism and chauvinism are not uncommon. The reaction of the State authorities to concrete examples and occurrences of such a nature cannot always be considered commensurate with the danger they represent.

37. Also noteworthy is the present tension among the population of the southern and eastern regions of the Ukraine and also of the Crimean Republic caused by the status of Ukrainian as the State language. Thus during the parliamentary elections of 1994 an inquiry carried out in the eastern region revealed a stable tendency to call for a second language - Russian - to be recognized as a State language.

38. The situation in regard to freedom of conscience and religious activity has improved considerably. At the same time the existence of confessional conflicts should be noted which to a certain extent not only worsen the situation among the religious but also make it difficult to shape and put into effect the proclaimed policy of the State in this regard. On the basis of interconfessional conflicts, cases of infraction of the principle of equality without any discrimination on the grounds of religion have been noted, particularly in the western regions of the Ukraine.

39. Indecision and blatant inconsistency in carrying out economic reforms have led to the creation of an objectively unjustified and ever sharper polarization in the economic situation of the various strata of the Ukrainian population. This considerably distorts the principle of equality of rights without regard to economic position recognized in the International Covenant and is bringing about ever-increasing social tensions in Ukrainian society.

40. Mention should be made of a tendency to extend the juridical procedure for protecting the rights and freedoms of the citizens and reducing the extent of administrative discretion. This applies above all to ensuring and putting into effect the political rights and liberties of Ukrainian citizens.

41. Professional legal guarantees of the right to protection have also been enhanced by the development of a legislative basis for the organization and activities of the legal profession, which will be dealt with in more detail later.

Article 3

Equality of rights between men and women

42. Legislative provisions guaranteeing equality of rights between men and women in Ukraine can be considered completely satisfactory. However, the real position of women in Ukrainian society, their practical and actual participation in the first place in the political life of the country and their effect on the processes of reform, is clearly inadequate. In addition the ever worsening economic situation is having an effect above all on the socially most disadvantaged sections of the population, including the real situation of women. For that reason it is at this very moment that the formal equality of rights between the sexes needs considerable reinforcement in the shape of political and economic guarantees.

Article 4

State of emergency

43. During the report period in Ukraine for the first time a legal basis was provided for a state of emergency. In June 1992 a Ukrainian State of Emergency Act was adopted. It had been developed with full consideration for the stipulations of this Covenant and other international obligations of Ukraine. So far there has been no objective basis for its application in Ukraine.

Article 6

Right to life

44. It must be noted that recently the internal legislation of Ukraine has come considerably closer to the stipulations of this Covenant. Thus there has been a considerable reduction in the number of crimes for which the most severe measure of punishment - the death sentence - is envisaged. While during the preparation of the previous periodic report the Penal Code of Ukraine laid down the death sentence for 32 crimes, it does so now for only 20 - for the most serious crimes and only when the sentence of the court has come into effect. Meanwhile 15 of these crimes are taken into account only if they were committed in wartime or in a warlike or conflictual situation. Sentence of death for economic crimes has been abolished.

45. The number of death sentences that are carried out is falling. Thus in 1992, 103 death sentences were carried out and in 1993, 78.

46. At the same time the value of human life has still not become absolute in Ukrainian society. Public opinion still does not permit of the complete abolition of capital punishment. This is confirmed by sociological surveys and the legislature takes up the same position, although it should be noted that in the history of the Ukraine an attempt to abolish the death penalty was made as long ago as 1918, during the existence of the Ukrainian People's Republic.

47. The draft of the new Penal Code of Ukraine envisages keeping the death penalty by shooting, but as an exceptional measure applied only to the most serious crimes. In respect of some categories of persons - men over the age of 65 and women - it is proposed to abolish the death penalty altogether. The present Ukrainian Penal Code stipulates that the death penalty shall not be applied to minors or to women who committed a crime when pregnant or are pregnant when sentence is passed or at the time when it should be executed (art. 24 of the Ukrainian Penal Code).

48. In the period since the presentation of the previous report, a number of new provisions designed to enhance protection of the health and life of the citizens have been introduced into the legislation in force. Thus a new wording of article 15 of the Penal Code, adopted by the Supreme Council of Ukraine on 26 January 1993, improves the legal guarantees of self-defence, including self-defence using weapons or any other means or appliances. Meanwhile it is laid down that the right to necessary defence does not depend on the possibility of avoiding the attack or appealing for help to other persons or to the authorities.

49. A new wording of article 238 of the Ukrainian Penal Code has substantially enhanced responsibility for so-called non-regulation relations, i.e. the use of violence or beatings or causing bodily harm by one serviceman to another in the absence of relationships of subordination between them. Liability for infractions of the rules for handling weapons or substances and objects which represent increased danger for nearby persons has also been reinforced (art. 245-1 of the Penal Code).

50. Recently there has been a constant increase in crime, including organized crime. In view of this the Supreme Council of Ukraine has adopted a State Programme for Combating Crime (25 June 1993) and also a Ukrainian Act on Organizational and Legal Measures for Combating Organized Crime (30 June 1993). At the same time a special coordinating council has been formed to coordinate the activities of State law enforcement agencies in the struggle against organized crime.

51. Criminal liability for taking of hostages has also been extended and increased: two supplementary sections have been added to article 123-1 of the Penal Code that lay down increased penalties for such acts when the hostage-taking is done with a view to blackmailing State or public establishments or authorities or their staff and also in cases where such acts are committed on members of the law-enforcement agencies or their families and close relatives or through previous conspiracy between a group of persons or by a particularly dangerous habitual criminal or in conjunction with the causing of a medium or severe degree of bodily harm.

52. In 1990 criminal liability was introduced in Ukraine for inciting pogroms, eviction of citizens by force and the commission of other acts that threaten public order and citizens' safety (art. 206-1 of the Penal Code).

53. In view of the ever-increasing danger to the environment, particularly as a result of the accident at the Chernobyl atomic power station, a Ukrainian Act on Environmental Protection was adopted in 1991 along with special articles in the Ukrainian Penal Code establishing liability for concealing or distorting information on environmental conditions or morbidity among the population and also for the preparation, processing or selling of radiation-contaminated foodstuffs or other products (arts. 227-1 and 227-2 of the Penal Code).

54. The Ukrainian Act on Protection of the Air adopted on 13 October 1992 also seeks to protect the life and health of the citizens as does the Ukrainian Act on Guaranteeing the Sanitary and Epidemiological Safety of the Population adopted on 24 February 1994.

55. A whole range of legislative instruments connected with the Chernobyl disaster have been devoted to protecting the life and health and improving the social welfare of a considerable proportion of the population of Ukraine. Most of them were adopted during the report period.

56. To supplement article 108-2 of the Ukrainian Penal Code on liability for infection with the human immunodeficiency virus (HIV) mentioned in the previous periodic report (para. 32), articles 108-3 and 108-4 have been adopted laying down penalties for infection with this virus by medical, pharmaceutical workers and workers in other spheres and also for publishing information on the carrying-out of medical tests for HIV infection and their results.

57. In addition a special Ukrainian Act was adopted on Prevention of AIDS and Social Protection of the Population (12 December 1992).

58. In view of the privatization of public catering, services and retail trade and the increase in the number of cases of food poisoning and in order to enhance protection of the life and health of the citizens a new wording was adopted in January 1994 for article 147 of the Penal Code, which strengthens the penalties for the production or sale of below-standard products.

59. The Ukrainian Acts on Work Protection (October 1992) and Safety from Fire (December 1993) can also be considered as directed towards ensuring the life and health of Ukrainian citizens.

60. The Ukrainian Act on Refugees adopted on 24 December 1993 also serves to ensure the right to life and health in face of the threat of violence in armed conflicts.

61. In connection with the introduction in the Ukraine of the post of President, the procedure for appealing for pardons and considering such appeals has been changed. During the report period 21 death sentences were commuted: in 1990, 6; in 1991, 6; in 1992, 5; in 1993, 3 and by 1 April 1994, 1.

62. Ukraine not only recognizes international standards concerning the right to life but also, having become an independent agent under international law and international policy, is playing a direct part in the ensuring of that right by the United Nations in zones of armed conflict. Thus a considerable Ukrainian contingent forms part of the peace-keeping forces of the United Nations in the former Yugoslavia.

63. In July 1993 the Supreme Council of Ukraine ratified the International Convention of 1989 against the Recruitment, Use, Financing and Training of Mercenaries.

64. In addition, worried by the possibility of unlawful participation by its citizens in armed conflicts beyond its borders, Ukraine has made it a crime to act as a mercenary or to take part in the armed conflicts of other States even without obtaining material remuneration or other personal advantage (arts. 63-1 and 187-7 of the Penal Code adopted in November 1993).

Article 7

Torture or cruel, inhuman or degrading treatment or punishment

65. Ukraine is a party to international agreements directed against torture and other cruel, inhuman or degrading treatment or punishment. In February 1994 Ukraine acceded to amendments to articles 17 and 18 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

66. Ukraine's domestic legislation also contains a number of special provisions designed to protect persons from torture, inhuman or degrading treatment or punishment. These were mentioned in particular in the previous periodic report (paras. 34 and 35). Nevertheless, information reaching the Public Prosecutor's Office and the law enforcement agencies indicates that there are certain problems in observing these standards.

67. During the report period degrading measures of punishment such as exile and expulsion and connected regulations were excluded from the Ukrainian Penal Code.

Article 8

Abolition of slavery, the slave trade and of forced labour

68. No slavery or slave trading has been reported in the Ukraine.

69. Under conditions where there was an absolute State monopoly in the ownership of the means of production, the right to free choice of occupation and free labour and also to a fair remuneration for it spoken of in the previous periodic report was in fact only an outward show. The State economic monopoly and the repressive tendency of State procedures provided a basis for real but masked forced labour and made it possible to leave the worker with a very small part of the added value he had created. The socialist economic system of the totalitarian model did not permit rational organization of production, distribution and consumption. The real position of the worker and

his level of pay still quite recently did not depend in practice on his actual personal contribution and bore witness to the existence of masked but substantial exploitation.

70. Changes in labour legislation during the report period have been mainly connected with the reform of the economy and its transition to market principles and with the general processes of democratization of Ukrainian society. In 1991 a Special Act of the Ukrainian SSR was adopted on amending and supplementing the code of labour laws as the Republic converted to a market economy.

71. Because of the transition to market relationships it has become necessary to reinforce the guarantees of employment for the population, to define its legal, organizational and economic basis and to increase the responsibility of the State for giving effect to the right to work. In view of this in particular, a Ukrainian Act on Employment of the Population was adopted in March 1991. In February 1994 Ukraine also ratified the ILO Convention No. 2 concerning Unemployment.

72. It is well known that since the early 1930s when a passport system and compulsory residence permits were introduced, it has been difficult to give effect to the right of citizens to free choice of their place of employment since obtaining a job was dependent on the possession of a permit to reside in the locality concerned. Some steps have now been taken to change this situation. In 1991 a new wording of article 25 of the Ukrainian Labour Code was introduced under which it was made illegal, when a labour contract was being concluded, to require from persons seeking work indications of which party or nationality they belonged to or the submission of documents not laid down by the existing legislation, including information on residence permits. However this regulation is practically not enforced as far as the residence permit is concerned, since this question has still not been finally regulated.

73. In June 1992 the Supreme Council of Ukraine adopted a decree on a single passport for Ukrainian citizens - an internal passport also usable as a foreign passport. Meanwhile the institution of residence permits was abolished and it was planned to introduce registration. For various reasons this decree was not enforced and in September 1993 the Supreme Council introduced substantial amendments and additions as a result of which the single passport was again divided into an internal passport, identifying the holder and confirming his citizenship of the Ukraine, and a passport enabling Ukrainian citizens to go abroad. In the internal passport it was also envisaged that registration but not a residence permit should be included. However, this decree also has not been put into effect up till now in regard to the residence permit and its coming into force has been deferred until 1995 for organizational and economic reasons.

74. The considerable extension of Ukraine's relations with other States has made it necessary to regulate juridically a new range of relationships connected with the work of foreign citizens in Ukrainian enterprises, joint enterprises and various types of international organization, etc. In view of this the Ukrainian Cabinet in August 1993 adopted a provisional decree and in February 1994 the Supreme Council adopted a Ukrainian Act on the Legal Status

of Foreigners regulating this complex of relationships, including labour relationships. The Act stipulated in particular that foreigners were equal before Ukrainian law, independently of their origin or social and economic position, race and nationality, sex, language, religious beliefs, type and nature of employment and other circumstances (art. 2). Article 3 stated the right to immigration into Ukraine to a permanent place of residence or for taking up work for a determined period, while article 8 laid down the right to engage in work. The juridical procedure for protection in the case of an order of expulsion from Ukraine was also laid down.

Article 9

Right to liberty and security of person

75. The right to liberty and security of person even earlier, before Ukraine gained its independence and the communist regime was abolished, had been widely trumpeted and to a considerable extent had recently been legally ensured. At the present time as a result of the overall processes of democratization, the restoration of freedom of speech and the substantial extension of legal openness the general guarantees of observance of this right have been improved.

76. July 1992 saw the repeal of article 214 of the Ukrainian Penal Code under which citizens could be made penally liable for habitual vagrancy or mendicancy. Now only administrative action may be taken against such people.

77. The adoption in December 1992 of a Ukrainian Act on the Legal Profession was of great significance. It strengthened the truly independent status of the lawyer as compared with before and enhanced his juridical and social prestige. In view of the obviously inadequate number of barristers the Ministry of Justice is now, on the basis of the Act on Entrepreneurial Activity, issuing individual licences to practise to persons who have completed their legal training but are not members of bar associations. It must be admitted that despite all the possible disadvantages of this practice, on the whole in the present conditions in the Ukraine it has had a positive effect.

78. The special juridical guarantees of liberty and security of the person on detention, arrest and remand in custody have also been strengthened. Thus on 1 April 1994 a new wording came into force for article 21 of the Ukrainian Code of Penal Procedure, which lays down the obligation on persons making preliminary inquiries, investigators, public prosecutors and judges to explain before he is first questioned the right of a suspect, accused person or defendant to have a defender. A note that this has been done must be specially recorded.

79. The special legal guarantees are also strengthened by the new wordings of articles 43, 43-1, 44, 46 and 48 of the Ukrainian Code of Penal Procedure which also came into force on 1 April 1994 and lay down the rights of an accused person or a suspect, the rights and duties of counsel for the defence, the procedure for his appointment and also the right and procedure to refuse a defending counsel.

80. Thus in particular it is laid down that an accused person or suspect has a right to an interview with the defending counsel before he is first questioned, and the right to refuse to testify or answer questions. The suspect also has the right to request the Public Prosecutor to verify the lawfulness of his detention.

81. Counsel for the defence has a right to take part in the case from the moment a charge is made and if a person suspected of a crime is detained or if measures are taken to isolate him by keeping him in police custody, from the moment the detainment order or the custodial warrant is made known to the suspect or at all events not more than 24 hours from the moment of detention.

82. For the first time it is laid down that the defending counsel has a right even before the first examination to have an interview with the suspect or accused person face to face, the right to interview a person on trial or a person in respect of whom compulsory measures of a medical character have been taken, to use technical devices when participating in carrying out inquiries or studying the files on the case (with the permission of the persons carrying out the inquiry or of the investigator and also of the court or the judge in court proceedings), to be present at all questioning of a suspect or an accused person and also during other phases of the inquiry (earlier this privilege was at the investigator's discretion). Finally it is laid down that documents connected with the execution by the defending counsel of his duties in a criminal case are not subject to inspection, disclosure, or removal by the person carrying out the inquiry, the public prosecutor, the judge or the court without his consent.

83. A provision has been removed from article 106 of the Ukrainian Code of Penal Procedure under which the agencies carrying out the preliminary inquiries had the right not to inform the suspect's family of the commission of a crime if in their opinion it might "hinder the establishment of the truth in a criminal case".

84. An important innovation in penal procedure legislation is the establishment of the right to appeal to the courts against a prosecutor's warrant for arrest and the procedure for considering the appeal (arts. 236-3 and 236-4 of the Ukrainian Code of Penal Procedure). By 1 January 1994 a Public Prosecutor's order to carry out preventive measures - detention in police custody - had been appealed against before the courts in 1,672 cases, in 508 of which it was rescinded.

85. To enhance the legal protection of persons convicted in court or subjected to an administrative penalty a Ukrainian Act was adopted on 17 June 1992 on the Procedure for Applying Penal Sentences and Administrative Measures in the Form of Fines.

86. Ukrainian legislation also envisages legal guarantees for the compensation of victims of unlawful arrest. In practice no such cases have yet been considered.

87. However the overall changes for the better in regulatory and legislative guarantees of the right to freedom are substantially outweighed by the unsatisfactory general condition of the system of justice. In particular, there are obviously not enough investigators, public prosecutors, judges and even people's assessors, and this often leads to unjustified delays in the investigatory procedures and in the transmission of cases to courts and their consideration therein. Thus, in particular, at present in Ukraine there is 1 judge for roughly 12,000 persons and 1 lawyer for 9,000, i.e. 8 judges and 11 lawyers per 100,000 inhabitants of Ukraine. These are clearly inadequate ratios and are largely responsible for the overall condition of society's legal potential. Naturally it is practically impossible to change them within a short time but the already expanding network of teaching establishments concerned with the law gives hope for the future. Also quite active assistance in this has been received from foreign government and public organizations and from Ukrainians abroad.

Article 10

The right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person

88. The previous periodic report noted the changes for the better which had taken place after 1985 in the regulatory and legal guarantees of the rights of persons detained in custody, arrested or imprisoned, which were designed to ensure a qualitative improvement in their detention in places of deprivation of liberty (paras. 55-62).

89. Mention should also be made of changes for the better in legal regulation of the position of persons deprived of their liberty that have occurred during the report period. In June 1993 a Ukrainian Act was adopted on Provisional Detention regularizing the treatment of persons detained on suspicion of committing a crime and taken into police custody. Under that Act such persons must be given three meals a day, have the right to an individual sleeping place, eight hours sleep at night, daily walks, the use of their personal clothing, footwear, television sets, and board games and the receipt of newspapers and magazines to read.

90. In 1991-1993 a number of amendments and additions were made to penal correctional legislation, designed to humanize conditions for convicts serving sentences and fuller provision for their general civil rights. In particular, since 1992 wages have been paid to convicts in full without a coefficient of reduction; new food standards have been introduced to meet the physiological requirements of the human organism; and the sums of money have been increased through which convicts may obtain foodstuffs and basic consumer goods, convicts have been given the possibility of using the telephone to talk to their relatives.

91. Recently the numbers of social workers have been considerably increased, psychological services have been introduced and public, including religious, organizations and relatives of the convicts have been drawn into educational work with them.

92. However, implementation of these rights and guarantees encounters considerable difficulties, the reasons for which are both objective and subjective. In particular, mention must be made of the inadequate level of financing of the activities of the penitentiary system, due above all to the present crisis in the Ukrainian economy. As a result of this the real situation of persons in preventive custody or serving sentences in prison must be recognized as still not meeting the generally accepted standards and international levels.

93. Attention must be drawn also to the persistence of psychological and behavioural stereotypes among the personnel of the penitentiary system, developed through decades of totalitarian government and practically inherited to a considerable extent until the present day. To change these stereotypes considerable cultural and educational efforts will have to be made.

94. The penitentiary system is still not under the necessary public control, although it should be noted that in addition to the boards of prison visitors that existed before and the commissions for monitoring the treatment of minors attached to the local executive authorities, during the report period a number of legal organizations were formed for protection of rights which deal with this problem as part of their activities. Without doubt the system under which criminal sentences are served has become more open, but on the whole society is still inadequately informed and not concerned enough about the condition and evolution of its penitentiary system. Wide public monitoring of its most essential aspects is extremely necessary.

95. It is expected that considerable progress will be made in dealing with these problems as a result of implementing a decree of the Ukrainian Cabinet, adopted in January 1994, on programmes for bringing up to world standards the conditions of detention of convicts serving sentences in places of deprivation of freedom and also persons kept in isolation for investigatory purposes and in curative labour preventive establishments. This decree was adopted as part of the implementation of the State programme for combating crime adopted by the Supreme Council of Ukraine in June 1993 and taking into account the Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other international instruments on human rights.

96. This Cabinet decree envisages the implementation over three years of a set of measures to improve the penal and correctional system of Ukraine as a whole. In particular plans have been made for the necessary legislative changes (adoption of Regulations on the Serving of Sentences, an act on establishments and the organization of the serving of criminal sentences in places of deprivation of freedom, etc.), a considerable increase in funding, the construction of new and the reconstruction of old special establishments, extension of the network of special teaching establishments, improvement in the professional standards of workers in the penitentiary system and in their social conditions, reinforcement of State and public monitoring and other measures. A bill making amendments to the Ukrainian Correctional Labour Code is now being prepared as well as a draft new Ukrainian penal correctional code.

Article 11

Prohibition of imprisonment on the ground of inability to fulfil a contractual obligation

97. Ukrainian legislation does not contain any provisions laying down deprivation of liberty for inability to fulfil a contractual obligation and there are no juridical precedents in this matter. Possible deprivation of freedom for such a cause by a private person will be treated in accordance with the present legislation as a crime against the person.

Article 12

Freedom of movement and choice of place of residence; freedom to leave any country

98. As is known, under the communist regime the right to freedom of movement and choice of a place of residence inside the country was made quite difficult by the institution of a residence permit and also by the actual absence of a housing market. The need for a residence permit and internal passport, as stated above, has not been abolished to this day and this cannot be considered as a positive situation. With the legalization of private ownership in housing and the carrying-out of wide privatization of State-owned flats a housing market has begun to take shape.

99. At the present time the conditions for receiving a passport have been made somewhat easier. In particular article 196 of the Ukrainian Penal Code on liability to punishment for infraction of passport rules has been repealed.

100. Article 195 of the Penal Code has also been repealed. This envisaged penal liability for infraction of the rules on entry to or residence in a border area or in forbidden zones.

101. Earlier the right to freedom of movement was considerably limited also by such measures of punishment as exile and expulsion. As already stated above, these were abolished by the Ukrainian Act of 6 March 1992.

102. In the previous periodic report it was recognized that the right to freely leave the country and to return without hindrance was limited (para. 65). During the report period fundamental changes have been made in the conditions and procedure for implementing this right. On 1 January 1993 in Ukraine the USSR Act on Entry and Departure was in force. This envisaged a procedure for filling in departure documents which corresponds to generally accepted standards and in particular every citizen of Ukraine obtained the right to claim the issue to him of a passport to go abroad and permission to leave for any country in the world for five years.

103. In January 1994 a Ukrainian Act was adopted on the procedure for leaving Ukraine and entering Ukraine to be followed by Ukrainian citizens. It is based on a procedure for applying for the exit documents and contains

practically no limitations except those connected with the need to protect State security, public order and the health or morality of the population and also the rights and freedoms of other citizens. In addition, at the same time a Ukrainian Official Secrets Act was adopted laying down juridically clear characteristics, grounds and procedures for classifying information as a State secret, declassifying it and dealing with other aspects of State secrecy of information. This is important since in the law on entry and departure, one of the statutory limitations on the implementation of this right is that the person claiming it had become privy to a State secret in the course of his official duties.

104. Under the Ukrainian Act on Citizenship of Ukraine adopted during the report period, a citizen of Ukraine cannot be deprived of his other citizenship. The preamble to the Act states that "the right to citizenship is an inviolable human right. No one can be deprived of citizenship or the right to change citizenship". The Act also guarantees retention of citizenship in the event of permanent residence outside Ukraine (art. 7). "A citizen of Ukraine cannot under any circumstances be limited in his right to enter the country" (art. 1). There have been no cases of banishment in Ukraine during the report period.

105. At the same time it must be noted that exercise of the right to leave the country, like that of the right to free choice of place of residence, is made considerably more difficult for most of the citizens of the Ukraine at the present moment by economic factors.

Article 13

Expulsion of aliens

106. Further to the information contained in previous periodic reports, it must be noted that changes for the better have also taken place in the legal basis that regulates this problem. Thus in February 1994 a Ukrainian Act on the Legal Status of Aliens was adopted. In July 1992 article 195-1 was removed from the Penal Code, which had made it a penal offence for aliens and stateless persons to infringe the rules governing movement within Ukraine. On the whole substantial changes for the better have also taken place in the freedom for foreigners to move about in the Ukraine.

107. During the report period there was only one case of the expulsion of a foreign citizen from the Ukraine. This was done in accordance with the internal legislation of Ukraine and with international practice - in April 1994 a Swedish citizen was expelled in connection with acts he had committed that showed evidence of a connection with nuclear terrorism.

108. However, in practice there is also still the unsolved problem of the status of naval personnel in the Black Sea Fleet who are citizens of Russia. This causes difficulties for both sides: for Ukraine her State sovereignty and extraterritoriality are involved and for Russia the extent of the rights and conditions for her citizens to stay in the territory of a foreign State.

Article 14

Conduct of legal proceedings on the basis of equality of citizens before the law and the courts

109. The third periodic report spoke in some detail of the constitutional and legislative guarantees of this principle (paras. 68, 69, 70 and 71). Under the communist regime and with the absolute monopoly of communist party structures in all forms of State power, including that of the courts, the equality of citizens before the law and the courts was in practice only formal and for outward show. Thus, in particular, article 154 of the Constitution of the Ukrainian SSR (1978) stated that "justice in the Ukrainian SSR is based on the principle of the equality of citizens before the law and the courts", while article 153 stated that "judges and people's assessors are independent and subject only to the law". However it is well known that the so-called "telephone law" based on the political, economic and social dependence of the judges on the regime substantially distorted and outweighed observance of these provisions in actual practice.

110. During the report period some changes for the better occurred in this respect also. As already noted, the judicial system has been depoliticized. In December 1992 a Ukrainian Act on the Status of Judges was adopted which considerably improved juridical guarantees of their activities. The development of self-government of the Order of Magistrates should help to strengthen their independence, its legal basis being the Ukrainian Act on Self-Governance of the Judiciary adopted on 2 February 1994. With a view to improving the professional level of judges, a Ukrainian act was adopted at the same time on qualification panels, qualification certificates and the disciplinary liability of judges in Ukrainian courts. In February 1994 a Ukrainian Act was also adopted on amendments and additions to some Ukrainian legislative instruments in connection with amendments to the Act of the Ukrainian SSR on Legal Procedures in the Ukrainian SSR.

111. On the basis of the need for a profound and wide-scale reform of the whole judicial system of Ukraine, the Supreme Council adopted in April 1992 the "Concept of judicial and legal reform in Ukraine", which deals with interrelatedness and consistency between the necessary organizational and legislative measures.

112. In June 1992 a Ukrainian Act on the Constitutional Court established that institution, which is of such extreme importance for implementing the principle of the separation of powers and enhancing the constitutional guarantees of democracy. Unfortunately, as a result of irreconcilable political differences the last Supreme Council nevertheless failed to select the judges for that court.

113. In November 1991 a Ukrainian Act was adopted on the Ukrainian Public Prosecutor's Office, setting up an independent entity. In particular it stipulated that monitoring of the observance and correct application of Ukrainian laws on the territory of Ukraine was to be the responsibility of the Ukrainian Attorney-General and the prosecutors subordinate to him. The Attorney-General is appointed by the Supreme Council of Ukraine and is

responsible and subordinate only to that Council. Thus for the first time in the last 70 years a single public prosecution service has been established that is not subject to any pressure from an outside body. One of the main tasks of the public prosecutor system under this Act is to protect against unlawful infringement the social, economic, political and personal rights and freedoms of the human being and the citizen guaranteed by the Ukrainian Constitution and legislation and also by international legal instruments ratified by Ukraine. The public prosecutors are also responsible for ensuring observance of the law by the authorities fighting crime and other inf actions and also in places where persons are detained or held in police custody, when sentences are carried out and when other measures of compulsion ordered by the court are applied.

114. As a result of the winning of State independence and the reorganization of the former Committee of Public Safety a Ukrainian Act on the Security Services of Ukraine was adopted on 25 March 1992. In it, side by side with the stipulation that the security services should be under the orders only of the President of Ukraine and under the supervision of the Supreme Council, it was stated that in its activities it must obey the laws concerning human rights and freedoms (art. 5) and the principle of allegiance to no party (art. 6). It laid down that the security services if they encroached on the rights and freedoms of citizens were obliged at those citizens' request to supply corresponding written explanations within a month. For the first time citizens were given also the right to appeal to the courts against unlawful acts committed by the staff and institutions of the security service (art. 5). Legislative guarantees were also laid down for greater openness of information concerning the service's activities (art. 7).

115. The Ukrainian Act on Judicial Expert Examinations, adopted on 25 February 1994, should also contribute to the technical improvement of judicial investigatory activities.

116. In view of the increasing number of persons and bodies engaged in economic activities and the growth in the number of economic disputes it is necessary to underline the importance of the adoption of a Ukrainian Act on Arbitration Tribunals (4 June 1991) and of a Code of Arbitration Procedure (6 November 1991).

117. In September 1993 yet another law was adopted designed to ensure and guarantee the constitutional rights of citizens, providing new possibilities for legally ensuring the considerable range of social relationships - a Ukrainian Act on the Profession of Solicitor.

118. During the report period there was a considerable raising of the level of penal responsibility for crimes against the administration of justice. Thus special articles were introduced in the Penal Code directed against interference in the conduct of court cases (art. 176-1), threats against a judge or people's assessor (art. 176-2), insults to a judge or people's assessor (art. 176-3), non-execution of a court decision (art. 176-4) or insults against a public prosecutor or investigator (art. 176-5). Also adopted were new and more precise wordings for articles 179 and 180 of the Penal Code, laying down penalties for refusal of an investigator or expert to

give evidence or interference with the attendance of a witness, a victim or an expert, or forcing such persons to refuse to give evidence or expert opinions or bribery of such persons or threatening retaliation for evidence or expert opinions given earlier.

119. Criminal penalties were also introduced for a number of acts connected with workers of the law enforcement agencies in connection with the performance of their official duties: for threats against a worker in a public prosecutor's office or an organ of the Ministry of Internal Affairs or the security authorities (art. 189-2), interference in their activities (art. 189-3), the infliction on them of bodily harm (art. 189-4) and also wilful destruction or damage of their property or the property of their near relatives (art. 189-5 of the Ukrainian Penal Code).

120. The effect of these provisions for the protection of justice was supplemented in February 1994 by Ukrainian Acts on Ensuring the Safety of Persons taking part in Criminal Proceedings and State Protection of Workers in the Courts or the Law Enforcement Authorities. These acts laid down a set of special measures for State protection of those participating in criminal proceedings and workers of the court and law enforcement authorities against interference in the performance of their duties and the exercise of the rights granted to them, and also against attacks on the life, health, dwellings and property of such persons and their near relatives in connection with their participation in court proceedings or their official duties.

Article 15

Being held guilty under the existing legislation

121. There have been no cases in Ukraine during the report period of prosecution for activities which under domestic legislation or international law were not recognized as criminal offences.

122. A Ukrainian Act of 7 July 1992 introduced amendments to articles 54 and 55 of the Penal Code connected with the remitting of a sentence and the expunging of a conviction in the case of persons convicted for offences which are not punishable. Thus the Ukrainian Penal Code in this respect has been brought into line with the stipulations of paragraph 1 of article 15 of the Covenant.

123. Chapter 1 of the special part of the Ukrainian Penal Code "State crimes" has undergone considerable amendment. While formerly articles in this section were distinctly political and ideological in tone, they can now be described as simply penal.

124. Among the most important changes attention should be drawn to the repeal of the notorious articles in the Penal Code on sabotage (art. 61), anti-Soviet agitation and propaganda (art. 62), organizational activities with a view to committing particularly dangerous State crimes and also participation in an anti-Soviet organization (art. 64), particularly dangerous State crimes committed against another workers' State (art. 65), failure to report a State crime (art. 80-1) and concealment of State crimes (art. 80-2).

125. Such articles of the Penal Code as those on treason (art. 56), espionage (art. 57), acts of terrorism (art. 58), subversion (art. 60), etc. have been given a new non-ideological and non-political wording.

126. New articles have also been introduced into the Penal Code in particular concerning actions designed to change or overthrow the constitutional order by force or to seize State power (art. 56-1) and on encroachment on the territorial integrity of Ukraine (art. 62). So far there has been no legal action under these articles.

127. Article 59 obliging citizens to guard and strengthen socialist property has been removed from the Ukrainian Constitution. This was reflected in the removal of the ideological content from chapter 2 of the Ukrainian Penal Code "Crimes against socialist property". Thus the articles on petty larceny of State or public property (art. 85) and on crimes against State or public property of other socialist States (art. 92), were eliminated and some articles were reworded.

128. A whole range of so-called economic crimes have also been excluded from the list of criminal offences, such as insertions and other distortions to accountants' records on the fulfilment of plans (art. 147-1), engaging in private entrepreneurial activity (art. 150), acting as a commercial middleman (art. 151), illegal reallotment of housing and the collection of rents above the amount laid down (art. 152).

129. Ukraine was the first of the republics of the former USSR to abolish criminal penalties for homosexuality (December 1991). Under the new wording of article 122 of the Ukrainian Penal Code liability to criminal penalty occurs only in cases of homosexual relations by force or under threat or by taking advantage of the helpless condition of the person involved.

130. In line with the recognition of a whole range of activities as not subject to criminal penalty the corresponding criminal cases were stopped and the persons convicted under them were released from their places of detention.

131. The rehabilitation of the victims of the communist regime also continued. In connection with this a Ukrainian Act was adopted on the Rehabilitation of Victims of Political Repression in Ukraine (April 1991). Amendments designed to make it more precise were made to this Act in 1992 and 1993.

132. At the same time, in connection with the legalization of private property and the development of market relationships and the consequent appearance of a whole range of new dangerous activities, a considerable number of new articles were introduced into the Penal Code, laying down penalties for infractions in particular of tax legislation, legislation on commercial activities, the rules of trade, etc.

133. In January 1993 the opening of foreign currency accounts outside Ukraine without a licence from the National Bank was made a penal offence, not only for civil servants or the staff of enterprises, establishments and organizations active within Ukraine, but also for private persons who are citizens of Ukraine and permanently reside on its territory. Despite fully

understanding the economic necessities behind this decision and the possibly excellent reasons for it it is difficult to consider it as fully corresponding to the standards of human rights.

Article 16

Recognition that a person is subject to the law

134. The present legislation of Ukraine does not contain any provisions contrary to the recognition that its own citizens, citizens of foreign countries or stateless persons within its jurisdiction are subject to the law.

Article 17

Freedom from arbitrary or unlawful interference with privacy, family, home or correspondence

135. The previous periodic report gave a detailed analysis of the legislative principles ensuring freedom from arbitrary interference in personal life and the integrity of the home and secrecy of correspondence. It should be noted, however, that although after 1985 a trend was observed for improvements to be made in legislation in respect of guaranteeing such rights, at the same time, since the communist regime was still then in existence, a regime characterized by the absolute supremacy of communist ideology and communist party structures in all spheres of public life, the real effectiveness of these standards and of the legislation as a whole was not very great.

136. During the report period substantial changes have occurred in the general political and general legal conditions for ensuring and implementing these rights and freedoms. At the same time this has been reflected in legislative trends and in concrete legal innovations.

137. Certain changes for the better have taken place in regard to compulsory application of measures of a medical character in the sphere of psychiatry, alcoholism and drug addiction.

138. During the report period a Ukrainian Act was passed on Police Searches (February 1992) that was important for regulating and better assuring the legality of the activities of criminal investigation departments.

139. A whole range of regulations designed to prevent interference in the personal life of citizens, infringement of the secrecy of correspondence and postal, telegraph and telephone communications, are included in the Ukrainian Information Act and Ukrainian Act on the Printed Media (October, November 1992) adopted during the report period.

140. Substantial innovations were introduced through the new wording of article 7 of the Ukrainian Civil Code adopted in May 1993. Thus, together with the right to dignity and honour which existed earlier, the right to protection of business reputation has now been introduced. Earlier the provisions of this article covered the dissemination of calumnious information only in the press, i.e. in the printed media, but now it covers also all mass

information media, including audio-visual devices. It is also stipulated that the disclaimer in respect of calumnious information in accordance with a court order must appear in the same press organ, a similar radio or television programme or some equivalent medium. Finally, for the first time, damages have been instituted for the infliction of material and even moral harm. It should be noted that court cases in such instances are quite frequent.

141. A new article has also been introduced into the Ukrainian Civil Code - article 44-1 - envisaging compensation for moral damages caused to a citizen or an organization not only in the cases indicated in the previous paragraph but in respect of any activities of another person that infringe his legal rights. Moral damages can be awarded in a monetary or other material form as decided by the court, without regard to the award of material damages.

Article 18

The right to freedom of thought, conscience and religion

142. During the report period, fundamental changes have occurred also in ensuring and implementing the right to freedom of thought, conscience and religion. These changes concern the development and extension of the scale of religious activity, the improvement of legislation and the nature and content of relations between religion and the State.

143. On 1 May 1994, 69 churches and other religious formations existed in Ukraine, totalling 14,973 congregations, whereas in 1989 only 13 religious denominations had been registered, comprising 8,021 congregations. The strongest now are the Ukrainian Orthodox Church (Moscow Patriarchate, 5,854 congregations), the Ukrainian Greek Catholic Church (2,952 congregations), the Ukrainian Orthodox Church (Kiev Patriarchate, 1,944 congregations) and the Union of Evangelical Christian Baptists of Ukraine (1,348 congregations).

144. For the first time also religious organizations have been legalized that were formerly systematically persecuted by the previous authorities in the Ukrainian SSR, such as the Ukrainian Greek Catholic Church, the religious communities of the Council of Churches of Evangelical Christian Baptists (dissenting Baptists), the Ukrainian Union of Christians of Evangelical Faith (Pentecostal Christians), the Ukrainian Religious Organization of Jehovah's Witnesses and the Church of Seventh-Day Adventists (reformed movement) in Ukraine, etc.

145. The juridical basis for implementing the right to freedom of conscience and religion has been the new wording of article 50 of the Ukrainian Constitution and the Ukrainian Act on Freedom of Conscience and Religious Organizations adopted as long ago as 1991. Under that Act religious communities may function without communication to the State authorities of information on their establishment and also without registration of their statutes (art. 8). Monasteries, missions, brotherhoods, management centres, communities and teaching establishments wishing to be granted the capacity of legal persons must register their constitutions (art. 14 of the Act). A legal procedure is also envisaged for considering disputes about registration.

146. In May 1992, article 138 of the Ukrainian Penal Code was abolished which had laid down penalties for infringements of the law on separating church from State and schools from church.

147. Note should be taken of changes in the attitude of the State also to believers who refuse military service on religious grounds. Thus as long ago as March 1992 a decree was adopted by the Supreme Council of Ukraine on exemption from punishment for persons convicted of failing to answer regular call-up for military service on religious grounds.

148. In addition, to ensure freedom of conscience while taking into account the universality of compulsory military service, in December 1992 the Supreme Council adopted a Ukrainian Act on an Alternative (Civilian) Service. This stipulated that the right to serve in an Alternative (Civilian) Service as a form of meeting general military obligations could be exercised in the case of genuine religious convictions by citizens of Ukraine belonging to religious organizations acting in accordance with the law whose tenets forbid the use of arms and service in the armed forces (art. 2). By the time this present report was being prepared, over 800 recruits had made use of this right but the implementation of the Act has not yet resulted in the establishment of general precedents.

149. There has been a qualitative change in the situation in regard to religion and education. In the senior classes of the State schools for general education a course has been introduced on the history of culture, including the history of religions. In addition, the development of private education is creating favourable conditions for wider religious education and special religious teaching and instruction is being extended. For example, Sunday schools set up by various religious denominations are becoming more and more common.

150. There is practically no hindrance to religious propaganda in the mass media, including radio and television. It should be noted in particular that there are regular cycles of religious broadcasts on television and that national State television broadcasts services on the main Orthodox religious feast days. A considerable number of special religious works are now being freely published and distributed. The inflow of religious literature and other religious matter from religious centres abroad has considerably increased. This is done legally and is not subject to import duty.

151. For the first time in the last 70 years the main Orthodox religious feasts have been declared legal holidays. The right to hold religious feasts in accordance with their calendar has also been extended to other denominations.

152. There has been a considerable extension of the international contacts of religious organizations to which citizens of Ukraine belong. They take on various organizational forms - exchange of delegations, participation in conferences, symposia and congresses, and the carrying-out of other joint activities, including activities in Ukraine itself. Thus in particular in August 1993 for the first time the International Congress of Jehovah's Witnesses was held in Kiev. There has also been a considerable increase in the number of pilgrims leaving or entering Ukraine.

153. At the same time mention must be made also of the existence of certain legislative limitations on the freedom of religious propaganda and activity, connected with the need to preserve public order, health and morality, and also to ensure the basic rights and freedoms of other citizens. The Ukrainian authorities relied precisely on these legal provisions when they banned and neutralized the activities of the "White Brotherhood" religious sect in autumn 1993. These actions were also based on the obligations of Ukraine under paragraph 4 of article 18 of the Covenant, which calls for respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

154. These events and the practical experience gained in implementing the Ukrainian Act on Freedom of Conscience and Religious Organizations have shown the need to further improve it, particularly in regard to the justifications and procedure for stopping the activities of religious organizations in accordance with court orders. With this in mind in December 1993 article 16 of the Act was supplemented by provisions that laid down a specific and definitive list of such cases and the procedure to be followed. Thus the activities of religious organizations can be stopped by court proceedings if they "combine religious rites and preaching with attacks on life, health, freedom and dignity", if they "systematically infringe the procedure laid down by legislation for conducting public religious events" and if they "incite citizens to refuse to fulfil their constitutional obligations or commit acts accompanied by gross infractions of public order or by attacks on the rights and property of State, public or religious organizations".

155. Mention must also be made of a certain tension in the activities of the Orthodox denominations, which is due mainly to their internal dissensions. Some responsibility for the development of this situation must be ascribed to the position taken by some political leaders and officials, not always, unfortunately, with due thought. In view of this the occurrence must be admitted of events, particularly in the western regions of Ukraine, in which the rights of believers to carry out their religious rites and services were infringed.

156. With a view to settling the conflicts arising from the procedure for utilization by the various communities of religious buildings and property which belonged to the State, in December 1993 article 17 of the Ukrainian Act on the Freedom of Conscience and Religious Organizations was amended. The additional wording in particular laid down the possibility of making these sites available in turn for the use of two or more religious communities on the basis of their mutual consent. In the absence of such consent the State authority will define this procedure independently by concluding a separate agreement with each religious community.

157. During the report period a considerable number of religious trends and associations that are not traditional in Ukraine arose and obtained legal status. This applies for instance to religious communities of the Church of Jesus Christ of the Latter-Day Saints (Mormons), the religious communities of the Spiritual Christians, religious communities of the New Church (Swedenborgists), the German Evangelical Lutheran Church, the Swedish

Evangelical Lutheran Church, the Korean Methodist Church and a whole range of others. At the present time over 40 such organizations are legally operating in Ukraine.

158. In view of this, more precise legislation was needed to regulate the procedure and conditions for the legal activities in the Ukraine of priests, preachers, preceptors and other representatives of foreign organizations who were foreign citizens and temporarily residing in Ukraine. An additional item in article 24 of the Ukrainian Act on the Freedom of Conscience and Religious Organizations, adopted in December 1993, specified that they could operate only in those religious organizations on whose invitation they had entered Ukraine and under an official agreement with the State authority that registered the statutes of the religious organization concerned.

159. The situation has also changed in regard to the holding of religious ceremonies in places of detention. Thus it has now been decided to establish in all places of detention prayer rooms for believers detained, with equal opportunities for all denominations and to allow their unfettered communication with local clergy. So far these measures have not been put into practice and have encountered certain difficulties of an organizational and technical character.

Article 19

The right to hold opinions without interference

160. It was noted above that one of the important results of reforming Ukrainian society during the report period has been the establishment of real political pluralism. There is now no persecution by the State for political dissent. Thus for the first time in the last 70 years of its history citizens of Ukraine enjoy the fullest possible right to hold their own opinions without interference.

161. At the same time it must be noted that the "openness" of the perestroika period has now been transformed into real freedom of expression in practically all its public forms. New non-State press publications, television and radio channels and information agencies have been formed and are actively functioning. A large contribution to this has been made by the establishment of a quite well developed legislative base.

162. Thus in October 1992 a Ukrainian Information Act was adopted, followed in November of the same year by a Ukrainian Act on Printed Media and in December 1993 by a Ukrainian Act on Television and Radio Broadcasting. These Acts, taken together, thus cover practically all aspects concerned with regulating the activities of the mass media, both State and private. This means that there exist in Ukraine political and legal guarantees of free expression of opinion in the mass media. It should be noted, however, that the implementation of this right is at present substantially limited by economic factors.

163. An important factor in implementing the right to dissemination of information is also the adoption of a Ukrainian Act on Scientific and Technical Information, laying down a juridical framework for that special type of information.

164. The substantial progress made in implementing the right to hold and freely express opinions without interference can also be judged from the electoral campaigns that have been conducted this year during the elections for the new Supreme Council and the President of the Ukraine.

165. It is also illustrated by the establishment of a considerable number of information contacts with Ukrainian citizens and organizations abroad, the substantial increase in the number of foreign journalists in Ukraine and the conditions under which they work. It is sufficient for example to draw attention to the legalization in Ukraine of a centre for correspondents of the "Freedom" radio station which until quite recently was considered one of the most serious opponents of the former political regime in respect of political information.

166. All this leads to the conclusion that today in Ukraine there is in fact no State monopoly in information or monopoly of any public organization or party.

167. The legal limitations established in Ukraine on the unhindered holding or free expression of opinion are in line with the principles and basis laid down in paragraph 3 of article 19 of the Covenant. In other words they are all provided by law and such as are necessary for respect of the rights and reputation of others and for the protection of national security, public order and public health and morals.

Article 20

Prohibition by law of propaganda for war and advocacy of national, racial or religious hatred

168. The legislative foundation for prohibition of war propaganda was noted in previous periodic reports as having existed in the Ukraine even earlier, both in the Constitution and in the laws. However, this did not prevent the communist regime from engaging in propaganda and real acts for the furnishing of so-called "international assistance", including military assistance through weapons and military advisers - or through direct aggression.

169. In defining the grounds and basis for the establishment of its State sovereignty, while still part of the former USSR, Ukraine in its Declaration of State Sovereignty (1990) proclaimed its intention to become in the future a permanently neutral State which does not take part in military blocs and holds to the three non-nuclear principles - not to use, produce or procure nuclear weapons. Later this was confirmed by the signature of the Lisbon Protocol ratifying the START I Agreement and the Treaty on Non-Proliferation of Nuclear Weapons and also by the signature of the Tripartite Agreement on that question with the United States of America and the Russian Federation.

170. That same Declaration proclaimed that Ukraine would actively cooperate in strengthening world peace and international security and for the first time also that citizens of Ukraine would undergo their active military service as a rule on Ukraine territory and could not be used for military purposes without the agreement of the Ukrainian Supreme Council.

171. The intention to preserve world peace and to ensure the development and democratic nature of a world order without conflict is characteristic also of two important documents adopted by the Supreme Council of Ukraine and defining its general line of conduct in the world community. These were the Fundamental Directions of the Foreign Policy of Ukraine and to its Military Doctrine. These aims, which are already being put into practice, are also served by the reduction in the armed forces of Ukraine now going on and the conversion of its war industry.

172. It is also necessary to draw attention to the fact that Ukraine was the first of all the republics of the former USSR to join in the NATO Partnership for Peace Programme.

173. In regard to paragraph 2 of article 20 of the Covenant it should be noted that the legislative provisions formerly in force in regard to the prohibition of incitement to national, racial or religious hatred were insufficient for positive regulation of inter-ethnic, inter-nationality and interreligious relationships. The corresponding State institutions were also insufficiently developed.

174. In view of this, practically immediately after the proclamation of independence on 1 November 1991, the Supreme Council of Ukraine adopted a Declaration of Rights of the Nationalities of Ukraine. This provided in particular that discrimination on the grounds of nationality was forbidden and punishable by the law. This and other stipulations of the Declaration were given statutory force in the Ukrainian Act on National Minorities in Ukraine adopted in 1992.

175. With a view to providing an organizational framework for the implementation of State policy in regard to relations between the nationalities, a decree of the President of Ukraine in April 1993 established a Ukrainian Ministry for Nationalities and Migration.

176. The freedom of expression which has actually been established in Ukraine has not been without some cost, particularly in connection with the establishment of organizational and technical possibilities for propagating masked or even open racist and chauvinistic views. It should accordingly be noted that society still does not possess any stable immunity against their propagation on the one hand and that on the other hand experience of lawful measures to counteract this phenomenon under democratic conditions is still clearly insufficient. Indicative in this respect is the delayed reaction of the authorities to openly fascist and anti-Semitic publications in a number of periodicals.

Article 21

Right to peaceful assembly

177. The right to peaceful assembly, side-by-side with the right to unhindered freedom to hold and express opinions, has received full expression during the report period.

178. Mention was made even in the previous periodic report (para. 105) of legislation ensuring the right to peaceful assembly. During the report period the legislation has been extended to the municipal level by adoption of local statutory regulations laying down the procedure for implementing this right in particular regions.

179. Meanwhile, during the report period liability to penalty for infringing the established procedure for holding meetings, processions and demonstrations was strengthened. The effect of articles 185-1 and 185-5 of the Ukrainian Code of Administrative Offences has now been backed up by articles 187-4 and 187-5 of the Ukrainian Penal Code, which lay down criminal penalties for infraction of the procedure for the organization and holding of meetings, street processions and demonstrations and also for the seizure of State or public buildings or installations. So far there has been no practical application of these articles.

180. The electoral campaigns that were carried out for the election of the Ukrainian Supreme Council and President yet again confirmed the steady implementation of the right of Ukrainian citizens to peaceful assembly.

181. At the same time mention must also be made of the existence of a number of legal problems of a statutory and practical nature in regulating the democratic procedure for the holding of public events and also in preventing the adverse consequences of unlawful behaviour by their organizers and participants. Mention must be made in this connection of a number of excesses that have taken place against a background of interdenominational disputes.

Article 22

Freedom of association

182. It is a well-known fact that the right of citizens to the free establishment of public organizations was proclaimed also in the 1936 Constitution of the USSR (art. 126) and in subsequent Constitutions of the USSR and the Ukrainian SSR. This was dealt with in detail in previous periodic reports from Ukraine. However, under the totalitarian communist regime it was precisely the free implementation of this right that was not permitted.

183. Certain changes for the better in this respect began to take place as long ago as the so-called "perestroika" period. Thus in 1990 a new wording

was adopted for article 49 of the Constitution of the Ukrainian SSR, laying down the right of citizens to freedom of association and providing a constitutional basis for a multiparty system. However, a real right to freedom of association was obtained only after the fall of the previous regime, when Ukraine established its independent statehood.

184. It should be noted that the previous periodic report drew attention to the unsatisfactory legislative basis for the right of citizens to freedom of association and the absence of the necessary legal mechanism for implementing it (paras. 110 and 111).

185. Ukraine now possesses a sufficiently developed legislation in regard to the regulation of relationships connected with the implementation by citizens of their right to freedom of association. In this connection mention should be made of the Ukrainian Act on Public Associations of Citizens and also of the Provisional Regulations for the Registering of Charities adopted on its basis by the Ukrainian Cabinet.

186. The registration of these organizations is based on application by submitting a set of documents clearly described in the Act and the Rules, which have no discriminatory intention. A refusal to register an association can be appealed against in the courts.

187. On the instructions of the Presidium of the Supreme Council of Ukraine, one of the Council's Commissions is now drafting a bill on charities. In this way it is proposed to raise the regulations governing the relationships involved in their establishment and activities to the level of an Act.

188. The activities in the Ukraine of foreign public (non-governmental) organizations have also been given their own regulatory legal basis. The legitimization of such organizations is now based on a decree on the procedure for registering branches, departments, missions and other structural subdivisions in Ukraine of foreign public (non-governmental) organizations issued by the Ukrainian Ministry of Justice on 26 February 1993. This procedure is in line with existing world practice.

189. So far the Ministry of Justice alone has registered about 500 public associations of citizens. These are parties and national and international public organizations.

190. The activities of religious organizations are regulated by the Ukrainian Act on Freedom of Conscience and Religious Organizations referred to above.

191. At the same time it has also become necessary to raise the level of responsibility of citizens in giving effect to their right to freedom of association. With this in mind articles 187-6 and 187-8 of the Penal Code have been adopted, which lay down penalties for establishing militarized formations not envisaged in legislation and also for illegal activities of citizens' associations.

Article 23

Protection of the family

192. Unfortunately in a year proclaimed by the United Nations as the Year of the Family it must be recognized that in Ukraine the institution of the family during the report period was in a difficult position. The reasons for this lie in the substantially worsened economic condition of society, in the permanent political instability, the crisis in the former morality and obviously in the still inadequate dissemination of general human moral principles and religious morality. In practice this is reflected in a reduction in the number of marriages celebrated, an increase in the number of divorces, a fall in the birth rate and a rise in the number of abortions, a higher average age of first marriage and first childbirth and finally a rise in mortality among the population. Thus in 1992 in Ukraine for the first time since the war a tendency for the population to decrease was noted.

193. Of course the State is making some efforts to reduce the effects of the economic crisis on the family by giving social assistance to the disadvantaged - pensioners, students, big families and single-parent families, but these measures are clearly inadequate and cannot have any substantial effect on the unsatisfactory economic position of a considerable number of families and potential family partners. This assistance is inadequate and is not always given to those who really need it. The solution to the problem lies in overcoming the economic crisis, carrying out effective economic reforms, increasing the stability of society as a whole, raising the prestige of the institution of the family and inculcating and improving morality and ethical behaviour.

194. Among the legal innovations mention should be made of changes in the Ukraine Marriage and Family Code consisting in the introduction of the institution of nuptial contracts. Thus article 27-1 adopted in June 1992 laid down the right to the conclusion of a nuptial contract which lays down the property rights and obligations of the spouses.

Article 24

Protection of children

195. The previous periodic report gave a detailed list of legislative provisions designed to ensure the normal existence and development of children in Ukraine. However during the report period implementation of these measures encountered considerable difficulties arising from the continually worsening economic situation in the country and a considerable reduction in the ability of the State to undertake one of its main functions - the protection of children.

196. In September 1991 the Convention on the Rights of the Child adopted by the United Nations at the forty-fourth General Assembly (resolution 44/25 of 20 November 1989) came into force in the Ukraine.

197. The Ukrainian Act on Ukrainian Citizenship regulates in practice all aspects of the obtaining of Ukrainian citizenship by children, including cases

in which the parents of the child at the time of its birth were citizens of Ukraine, cases when only one of the parents was a Ukrainian citizen at that time, and cases when the child's parents were stateless persons or unknown.

198. An important innovation is the inclusion in the Marriage and Family Code of Ukraine in 1991 of article 61, paragraph 3, in which for the first time the right of children to apply to the tutelage and guardianship authorities for protection of their rights and interests when the parents or one of them fails to fulfil properly his or her duties in the raising of the child or abuses parental rights is laid down.

199. At the same time article 76 of the Ukrainian Marriage and Family Code had a second paragraph added to it, empowering the tutelage and guardianship authorities in exceptional cases "where there was an immediate threat to the life or health of the child" to decide to remove the child forthwith from the parents or the persons responsible for his or her bringing-up. This strengthened the legal guarantees of the rights of the child in such extreme situations.

Article 25

Right to take part in the conduct of public affairs

200. The report period was characterized by substantial changes for the better in implementing the right to take part in the conduct of public affairs both directly and indirectly through the medium of democratic processes.

201. In 1990 the first elections during the whole communist period in which an alternative choice was available were held for all organs of representative power. In March 1991 the first referendum during that period was held and in December a referendum on the State independence of Ukraine and the first direct and national elections of a Ukrainian President. In March-April 1994 the first parliamentary elections under conditions of real multiparty choice were held and in June the first presidential elections were conducted under conditions of genuine and organizational political pluralism.

202. The parliamentary elections of 1994 were conducted in accordance with a new electoral law (adopted in November 1993) under conditions of State independence during the post-communist period.

203. Six hundred observers representing countries of western Europe, the United States of America, Canada and many international organizations directly observed the course of the voting. To ensure their effective presence and activities in the Ukraine the President of Ukraine issued a special decree. In the opinion of the international observers the elections were held in accordance with generally accepted democratic procedures and without any substantial infractions of the electoral laws of Ukraine that could have had a decisive influence on the final results.

204. Over 5,000 candidates stood for the 450 seats in the Supreme Council of Ukraine. In the first and second rounds of voting, 336 deputies were elected, which was sufficient to establish a constitutional majority in the new parliament. Meanwhile, it should be emphasized that for the first time during

the last three quarters of a century in accordance with a new decision of the Supreme Council adopted in October 1993, all the deputies worked on a permanent basis, i.e. without combining their parliamentary activities with any other job.

205. With a view to improving the guarantees of deputies' commitment to their activities and improving their links with their constituents, in November 1992 a Ukrainian Act on the Status of People's Deputy of Ukraine was adopted. At the same time, with a view to increasing the responsibilities of the deputies, on 21 April 1993 a Ukrainian Act was adopted on the Procedure for Obtaining the Consent of the Council of People's Deputies to Calling a Deputy to Account for his Acts.

206. In July 1991 a Ukrainian Act had already been adopted on all-Ukrainian and Local Referenda, laying down the general basis, principles and procedure for holding them and the juridical consequences of referenda and consultative surveys (consultative referenda).

207. In March 1993 new wordings were adopted for articles 127, 128 and 129 of the Ukrainian Penal Code, designed to strengthen the protection of the political rights of Ukrainian citizens in the course of elections. Thus penalties were laid down for any hindrance to the exercise of the right to vote, the forging of ballot papers, the addition or incorrect counting of votes, breaches of the secrecy of the ballot, etc. In addition an article 129-1 was introduced laying down criminal penalties for infractions of the law on referenda.

208. In 1991 the Ukrainian Act on Local Councils of People's Deputies and Local Self-government was adopted, introducing substantial innovations into the organization, of and mutual relationships between, structures of State power and local government. During the report period the Act was amended on several occasions to reflect both the evolution of the legislators' views on the organization and functioning of this important level of State administration and the self-organization of society and the changes occurring in the real relationships between political forces in the Supreme Council. The effect of this law was extended in February 1994 by the Ukrainian Act on the Establishment of Local Authorities and Local Self-government and also by a decree of the Supreme Council of Ukraine on Regulations governing General Assemblies of Citizens in their Places of Residence in Ukraine.

209. The accession of Ukraine in July 1993 to a European convention on the basic principles of transfrontier cooperation between local communities or authorities should also contribute to the development and expansion of the citizens' participation in the conduct of public affairs, taking into account the experience of other countries.

210. In February 1994 the Ukrainian Act on the Status of Deputies in Local Councils of People's Deputies was adopted which supplemented the Ukrainian Act adopted earlier on the Status of People's Deputies of Ukraine.

211. An important role in implementing the right of citizens to take part in the conduct of public affairs is also played by the very much greater openness of the authorities in supplying information, which is incomparably greater

than the publicity attending their activities in the previous report period. In this connection reference must be made in particular to the direct radio broadcasts and complete television broadcasts of sessions of the Supreme Council of Ukraine, the establishment by the State authorities of press services and departments for communications with the public and the regular holding of press conferences, etc.

212. Thus there are adequate juridical and factual grounds for asserting that in Ukraine today guarantees of a scope unprecedented during the whole of the country's many centuries of history exist for the implementation of the right of citizens to take part in the conduct of public affairs.

213. At the same time attention must be drawn to a number of shortcomings in the existing legislation and to concrete practical problems. So far there has been no success in effectively delimiting the structure of the executive and representative authorities and of local self-government and this creates considerable difficulties in implementing the right of citizens to take part in the conduct of public affairs. The reform of the structures of executive power undertaken in connection with the introduction of a presidency and representatives of the president in the localities was not accompanied by abolition of the executive powers of the councils of people's deputies and this has led to unjustified duplication, conflicts of authority and disputes concerning organizational executive powers.

214. Foreign observers have also noted the ineffectiveness of the voting procedure resulting from the need to strike out all candidates against whom the citizens are voting (negative voting). The Central Electoral Commission came to the same conclusion. As a result it is proposed to go over to positive voting, under which on the ballot form citizens will indicate only the candidate <u>for</u> whom they are voting. There is also a need to improve the procedure for establishing the lists of voters, forming electoral commissions, actual voting, the counting of votes and finally conducting electoral campaigns, in particular ensuring equality in the use of State mass information media.

215. The electoral legislation of Ukraine still contains relics of the former political regime in the shape of the right of bodies of workers to put forward candidates for the post of people's deputy, making those bodies component parts of society's political system. It must be assumed that as a developed multiparty system becomes established these relics will die out.

216. A factor that may be considered as strengthening guarantees of participation of Ukrainian citizens in the conduct of public affairs is adoption of the Ukrainian Civil Service Act (1993), laying down principles for the selection, promotion and job security of State employees and their specific rights and obligations.

217. At the same time it should be noted that reform of the State structure of Ukraine and the structures of State power in local administration cannot yet be considered to be completed. In our society a process of establishing statehood and developing stable concepts of its forms and institutions is still going on. Its results will be reflected in the new Constitution and in the organizational measures that arise from it.

Article 26

Protection against discrimination

218. Formally Soviet legislation of the post-Stalin period forbade all forms of discrimination, including discrimination on social and political grounds (this was discussed in more detail in the previous periodic report, paras. 126 and 127). However, in practice open forms of discrimination existed on the grounds of political convictions and more precisely on the basis of membership of the Communist Party. In practice all the leading posts in State and public structures were open only to members of the Communist Party of the Soviet Union. Membership of the party was compulsory for any significant progress up the promotional ladder. In conditions where private property was forbidden and the State had an absolute monopoly in the means of production this in fact meant not only moral but also economic coercion to remain loyal to the Party.

219. With the fall of the communist regime the constitutional and legislative guarantees against discrimination obtained qualitatively new political conditions for their implementation. However, attention must be drawn to the existence of certain socio-economic, cultural and psychological preconditions for certain acts of discrimination on ethnic, property, religious, linguistic or gender grounds.

Article 27

Rights of minorities

220. Having become an independent sovereign State Ukraine assumed full responsibility for restoring the previously infringed rights of national minorities living on its territory and also for ensuring their observance.

221. In the Declaration of the Rights of the Nationalities of Ukraine already mentioned, Ukraine assumed the obligation to guarantee to all peoples national groups and citizens living on its territory equal political, economic, social and cultural rights (art. 1).

222. It was also proclaimed that representatives of the peoples and national groups would be elected on the basis of equal rights to organs of State power at all levels and would occupy posts in the executive structures of enterprises, establishments and organizations.

223. At the same time it should be noted that this equality of rights is not recognized by the Ukrainian authorities in a merely formal and legalistic fashion. When these rights are being implemented account is taken of the actual situation and the real position of a particular national minority. For instance, the process of return and rehabilitation of the Crimean Tartar people requires special attention and a special policy from the State, including a policy on organizing State power and making it effective. As a result under the Constitution of the Autonomous Republic of the Crimea the Crimean Tartar population obtained a separate quota in its Supreme Council.

224. Article 3 of the Declaration speaks of the guarantees to all peoples and national groups of the right to free employment of their native language in all spheres of public life, including education, production and the receipt and dissemination of information. Here a separate provision was inserted obliging the Ukrainian State to guarantee its citizens the right to free use of the Russian language and also, in places where compact groups of several nationalities were residing, the right of those groups to use the language adopted by the population of the locality concerned in addition to the State language, Ukrainian.

225. Article 4 of the Declaration deals with guarantees for every nationality in the Ukraine to profess their religion, to make free use of their national symbols, to celebrate their national holidays and to take part in the traditional ceremonies of their people.

226. Further to the provisions of this Declaration and to provide legislative guarantees of the right of national minorities to their free development, a Ukrainian Act on National Minorities in Ukraine was adopted, as already stated, in 1992. That Act in particular gave a legally significant definition of a national minority (art. 3) and laid down the State and public institutions called upon to regulate relationships in this respect, for instance, a Council of Representatives of Public Associations of National Minorities of Ukraine attached to the Ministry for Nationalities and Migration (art. 5), which for the first time gave citizens of the Ukraine the right to choose and regain their nationality (art. 11) and the right to a national surname, first name and patronymic (art. 12). Under this Act national public associations also have the right to put forward their own candidates as deputies at elections for organs of State power (art. 14).

227. This same Act provided that in the State budget of the Ukraine special funds must be set aside for the development of national minorities (art. 16). Ukraine is now ensuring practically on its own the return to the Crimea and settlement there of the Crimean Tartar people expelled in 1944 on Stalin's orders. In May 1994 for the first time the anniversary of the deportation of the peoples of the Crimea was commemorated at State level.

228. Substantial national minorities in the Ukraine, such as the Russians, the Jews, the Poles, the Hungarians, Romanians and others are all also making more active use of their right to cultural autonomy.

229. Ukraine is making specific efforts to conclude intergovernmental agreements regulating and maintaining the links between national minorities and their historical homelands. These initiatives are based on the stipulation of article 15 of the Ukrainian Act on National Minorities, which lays down the right of citizens of Ukraine belonging to such minorities to establish and maintain links with people of their own nationality and with their public associations outside the borders of Ukraine.